IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.1749 OF 2007

Krishna Rukmana Konduskar ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr A. S.Khandeparkar i/b Khandeparkar & Asso.
Advocate for the Applicant.

Mr K. V. Saste, A.P.P. for the State.

CORAM: V.C. DAGA,J.

DATED: 10TH JULY, 2007.

P.C.:-

1. Heard learned counsel for the applicant and learned APP for the State.

2. Perused the application.

3. The applicant is charged for the commission of the offence under Sections 302, 201, 120 (B), 364, 404 read with Section 34 of the I.P.C.

4. Here I may mention that the observations made by learned Additional Sessions Judge, Sindhudurg in paras 4 and 5 of the order dated 20-3-2007 while rejecting application for bail also hold good even while considering the present application. Para 4 and 5 of the said order read as under:

After considering the submissions advanced and perusing the say submitted by the State, it will find that initially the offence was registered under Sections 304(A) of IPC and thereby the death was shown as a result of rash and negligent act of driving of motor vehicle but later on, it was transpired that it was a well planned commission where the force of Motor Accident was shown after causing various injuries to the deceased or after causing his murder. The case of the prosecution is that the deceased was maintaining immoral relations with wife of one Uttam Pawaskar who then collected the people, they formed an unlawful assembly with intention to kill Mahendra Varadkar. Accordingly, a plan was prepared and it was executed between the force of accident was shown. Further, according to the prosecution the present applicant is a habitual offender and that he assaulted the deceased with an iron pipe which has been recovered from him during the course of investigation. Thus, according to the prosecution, the previous conduct of the applicant and the role assigned to him in the instant case warrant that prima facie is involvement is apparent and he cannot claim innocent. As against that, on behalf of the applicant it is submitted that mere recovery of a pipe from public place cannot be said an evidence in order to involve the applicant in the case and even though it is assumed for the moment that the pipe was recovered at the instance of Applicant. The Medical certificate or post mortem report shows otherwise.

The probable cause of death has been shown in the post mortem report is due to head injury. The other injuries present in column no. 17 of the autopsy report indicates an abrasion was present on the right eye, right leg, left leg and the peena of left ear was cut and more particularly head injury of 2x4x4 cms has been noticed on right tampered bone with blunt trauma in circular shape. The skull was also found fractured. Right temporal bone has been fractured. After considering the nature of injuries as well as number of

injuries it will find that the deceased was assaulted to death and head injury was proved to be fatal to the death. Now the question is whether the head injury is caused by the pipe seized or otherwise but prima facie. There appears evidence indicating the involvement of the applicant. The offence alleged is serious in its nature. The involvement of the applicant in some other criminal case from the area where he resides, also throws sufficient light on the truth and as such the mere fact that the investigation is complete and charge sheet has been submitted, cannot be said to be incident for grant of bail.

5. Thus, there is sufficient material on record to connect the applicant-accused with the alleged commission of the offence. The offence is serious one. If the applicant is released on bail possibility of tampering the prosecution witnesses cannot be ruled out. In this view of the matter, I am of the opinion that this is not a fit case for grant of bail.

6. In the above view of the matter, the application is rejected. Trial be expedited.

(V.C. DAGA,J.)